



THE ATTORNEY GENERAL OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN 11, TEXAS

April 25, 1947

Hon. Paul H. Brown
Secretary of State
Austin, Texas

Opinion No. V-163

Re: The designation of notes receivable as "property" within the meaning of Article XII, Section 6, Constitution of Texas.

Dear Sir:

You have submitted the following request for the opinion of this department.

"1. There has been submitted to this department applications for proposed corporate charters wherein the following situation appears:

"a. In payment for capital stock subscriptions notes receivable secured by chattel mortgages on automobiles is shown.

"b. Current assets of the proposed corporations include customers accounts receivable.

"2. Do the items shown in a and b, foregoing, or either of them, constitute property within the meaning of Article 12, Section 6, Constitution of Texas, and, if so, what investigation, if any, should the Secretary of State make in respect to either a or b?"

Article XII, Section 6, of the Constitution of Texas is as follows:

"No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void."

Article 1308, Revised Civil Statutes of Texas, 1925, which was enacted pursuant to the above constitu-

tional provision, is in part as follows:

"Before the charter of a private corporation created for profit can be filed by the Secretary of State, the full amount of its authorized capital stock must be in good faith subscribed by its stockholders and fifty per cent thereof paid in cash, or its equivalent in other property or labor done, the product of which shall be worth to the company the actual value at which it was taken or at which the property was received. The affidavit of those who executed the charter shall be furnished to the Secretary of State, showing: . . .

"2. The cash value of any property received, giving its description, location and from whom and the price at which it was received; . . .".

That notes receivable secured by chattel mortgages on automobiles and customers' accounts receivable are personal property subject to taxation is conclusively demonstrated by the Legislature definition thereof contained in Article 7147, Revised Civil Statutes of Texas, 1925, which is in part as follows:

"Personal property, for the purposes of taxation, shall be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of this State, whether the same be in or out of the State; . . ." (Emphasis added).

Article 7149, Revised Civil Statutes of Texas, 1925, defines the term "credits" as follows:

"'Credits.'-The term, 'credits,' wherever used in this title, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due." (Emphasis added)

In the case of O'Bear-Nester Glass Company et al, 101 Tex. 431, 108 S.W. 967, the Supreme Court of Texas, construed the meaning of Article XII, Section 6 of the Constitution of Texas as follows:

"The terms in which this section of the Constitution is expressed indicates the purpose that the assets of the corporation should be something substantial, and of such a character that they could be subjected to the payment of claims against the corporation as well as to secure the shareholders in their rights in the capital stock. . . ."

In view of the above legislative and judicial construction, it is the opinion of this department that notes receivable secured by chattel mortgages on automobiles and customers' accounts receivable constitute property within the meaning of Article XII, Section 6, Constitution of Texas.

Referring to the second part of your question as to what investigation, if any, should the Secretary of State make in respect to the above property, it is presumed that your query refers to the ascertainment of the "value" of such property.

Article 1309, Revised Civil Statutes of Texas, 1925, which must be construed in connection with Article 1308, supra, is as follows:

"If the Secretary of State is not satisfied, he may, at the expense of the incorporators, require other satisfactory evidence before he shall be required to receive, file and record such charter."

The foregoing article was construed by the Supreme Court of Texas in the case of Beach et al, vs. McKay, State Secretary, 191 S.W. 557, as follows:

"The question whether the stock had been subscribed in good faith, and whether 50 per cent thereof had been paid in cash, or its equivalent, are questions of fact to be determined by the secretary of state by the exercise of a discretion lodged with him by law. . . ."

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Therefore, the nature and extent of any further investigation of the value of such property, if such investigation is deemed necessary, lies wholly within your discretion.

SUMMARY

Notes receivable secured by chattel mortgages on automobiles and customers' accounts receivable constitute property which may be received in payment of capital stock subscriptions within the meaning of Article XII, Section 6, Constitution of Texas. Investigation may be made by the Secretary of State as to the value of such property under the provisions of Article 1309, R.C.S., and the nature and extent thereof lies wholly within his discretion.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



C. K. Richards
Assistant

CKR/lh

APPROVED: April 25, 1947


ATTORNEY GENERAL